

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

RAY A. MILES,

Plaintiff,

vs.

VETERANS ADMINISTRATION
POLICE,

Defendant.

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No. 4:06CV00829 SWW

Memorandum Opinion and Order

Before the Court is defendant's motion to dismiss to which plaintiff failed to file a timely response. For the reasons stated below, the motion is granted.

Background

Plaintiff filed a *pro se* complaint on July 18, 2006. He alleges that he was taken to the Veterans Administration Hospital on May 15, 2006, for treatment of pain. He says the doctor on duty gave him the wrong medication. Plaintiff states he went back the next day, and the doctor on duty in the emergency room gave him a pill. Plaintiff says that when he was leaving the hospital, Veterans Administration Police accused him of threatening someone, handcuffed him, and took him to the county jail. He states he remained in jail until June 9, 2006, the day after the charges against him were *nolle prossed* after the police officers failed to attend court. Plaintiff says he was bitten by a spider while he was in jail and did not receive proper care.

Discussion

Defendant moves to dismiss the complaint pursuant to Fed.R.Civ.P. 12(b)(1), lack of subject matter jurisdiction. While it is not clear from his complaint, it appears plaintiff is

pursuing claims of false imprisonment and/or malicious prosecution against defendant. The Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 1346, 2671-2680, waives the immunity of the federal government for tort claims, subject to the terms and conditions of the FTCA.

The proper defendant in a FTCA action is the United States of America, not a federal agency or employees of the agency. *Duncan v. Dep't of Labor*, 313 F.3d 445 (8th Cir. 2002); *Knowles v. United States*, 91 F.3d 1147 (8th Cir. 1996). Plaintiff has not sued the United States; rather, he filed a lawsuit against a component of a federal agency, the Police Service of the Central Arkansas Veterans Healthcare System.

Furthermore, there is no evidence that plaintiff exhausted his administrative remedies. A tort claim cannot be brought against the United States unless the claimant has first presented a claim to the involved federal agency, and the claim has been denied by the agency in writing. 28 U.S.C. § 2675(a). Presentation of an administrative claim to the agency before commencing litigation is a jurisdictional prerequisite. *Bellecourt v. United States*, 994 F.2d 427 (8th Cir. 1993).

Conclusion

IT IS THEREFORE ORDERED that the motion to dismiss should and hereby is granted. Plaintiff's complaint is dismissed pursuant to Fed.R.Civ.P. 12(b)(1) for lack of subject matter jurisdiction.

DATED this 21st day of November 2006.

/s/Susan Webber Wright

UNITED STATES DISTRICT JUDGE